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| 09/938,683  | 08/24/2001  | David A. Burwell     | JBP-566               | 2538             |
| 27777   | 7590        | 08-25/2004           | EXAMINER              |                  |
| PHILIP S. JOHNSON<br>JOHNSON & JOHNSON<br>ONE JOHNSON & JOHNSON PLAZA<br>NEW BRUNSWICK, NJ 08933-7003 |             |                      | CHEVALIER, ALICIA ANN |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 1772                  |                  |

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/938,683 | <b>Applicant(s)</b><br>BURWELL ET AL. |  |
|                              | <b>Examiner</b><br>Alicia Chevalier  | <b>Art Unit</b><br>1772               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**RESPONSE TO AMENDMENT**

***Request for Continued Examination***

1. The Request for Continued Examination (RCE) under 37 CFR 1.53 (d) filed on July 28, 2004 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 1-23 are pending in the application, claim 24 is cancelled.
3. Amendments to the claims, filed on June 4, 2004, have been entered in the above-identified application.

***WITHDRAWN REJECTIONS***

4. The 35 U.S.C. §103 rejection of claims 1, 5-17 and 20-22 as over Pelkie (US Patent No. 5,733,628) in view of Cashaw et al. (US Patent No. 5,843,267), made of record in paper #11, mailed March 2, 2004, pages 4-8, paragraph#13 has been withdrawn due to Applicant's amendment in the response filed June 4, 2004.
5. The 35 U.S.C. §103 rejection of claims 2-4 as over Pelkie in view of Cashaw and further in view of Daponte (US Patent No. 4,863,779), made of record in paper #11, pages 8-9, paragraph#14 has been withdrawn due to Applicant's amendment in the response filed June 4, 2004.
6. The 35 U.S.C. §103 rejection of claims 18 and 19 as over Pelkie in view of Cashaw and further in view of Han (US Patent No. 5,853,638), made of record in paper #11, pages 9-11, paragraph#15 has been withdrawn due to Applicant's amendment in the response filed June 4, 2004.

7. The 35 U.S.C. §103 rejection of claim 23 as over Pelkie in view of Cashaw and Han and further in view of Daponte, made of record in paper #11, pages 11-12, paragraph#16 has been withdrawn due to Applicant's amendment in the response filed June 4, 2004.

#### ***NEW REJECTIONS***

8. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

#### ***Examiner's Comment***

9. It is noted that Applicant has the limitation "an apertured film layer having a *smooth* side and a *rough* side" in claim 1. Applicant's have defined the "rough" side as which contains the raised protuberances and the "smooth" side as the side from which the raised protuberances originated (*Applicant's specification page 3, lines 10-24*). For purposes of examination an apertured film having one surface with raised protuberances, i.e. a non-flat surface, and a the other surface without protuberances is considered to read on the limitation of having a *rough* side and a *smooth* side.

#### ***Claim Rejections - 35 USC § 103***

10. Claims 1, 5-17 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie (U.S. Patent No. 3,733,628) in view of Roe (U.S. Patent No. 5,607,760).

Pelkie discloses a breathable elastic polymeric film laminate useful in disposable absorbent products such as diapers and hygiene products (*col. 1, lines 8-9*).

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Regarding Applicant's claim 1, Pelkie discloses a bilayer laminated personal care article (*diaper, col. 1, lines 8-9*) comprising an apertured film (*apertured elastomeric web, col. 2, lines 30-39*) having a smooth side and a rough side (*figure 2*) and an absorbent layer (*absorbent fibrous carrier material, col. 2, lines 40-46 and col. 4, lines 51-63*) wherein the absorbent layer is laminated to the smooth side of the apertured film layer (*figure 2*).

Pelkie fails to disclose that the article is loaded with a skin cleansing composition and that the article is useful for providing skin care benefits.

Roe discloses a disposable absorbent article such as diapers having a lotioned topsheet containing an emollient (*title and col. 1, lines 11-14*). Roe discloses that the article (*diaper*) is loaded with a skin cleansing composition, since the reference discloses that the lotion composition is applied to the outer surface of the diaper topsheet (*col. 10, lines 17-21*). The lotion composition is deemed to be a skin cleansing composition, since the reference discloses that the key active ingredient in the lotion composition is one or more emollients, which cleanse the skin (*col. 15, lines 23-26*). Also, the article (*diaper*) is deemed useful for providing skin care benefits, since the reference discloses that the lotion has emollients that cleanse the skin (*col. 15, lines 23-26*) and enhances skin softness (*col. 1, lines 9-11*).

The lotion composition reduces the adherence of bowel movements to the skin, thereby improving the ease of bowel movement clean up and enhancing skin softness (*col. 1, lines 9-11*).

Pelkie and Roe are analogous because they both discuss disposable absorbent article such as diapers.

It would have been obvious to one of ordinary skill in the art at the time of the invention to add Roe's skin cleansing composition to Pelkie's personal care article in order to enhance skin

care. One of ordinary skill in the art would have been motivated to use the skin cleansing composition of Roe because it reduces the adherence of bowel movements to the skin, thereby improving the ease of bowel movement clean up and enhancing skin softness (*Roe col. 1, lines 9-11*).

Regarding Applicant's claims 5-7, Pelkie discloses that the article has a compressibility greater than about 14 percent, more specifically greater than about 19 percent, and even more specifically greater than about 25 percent, since the reference teaches the laminate has a compressibility from about 5 to about 50% (*col. 9, lines 55-57*).

Regarding Applicant's claims 8-13, Pelkie does not explicitly disclose that the article has a resiliency greater than about 85 percent, more specifically greater than about 90 and even more specifically greater than about 94 percent or that the article has a bond strength from about 70 g/cm<sup>2</sup> to about 350 g/cm<sup>2</sup>, more specifically 100 g/cm<sup>2</sup> to about 300 g/cm<sup>2</sup> and even more specifically 150 g/cm<sup>2</sup> to about 300 g/cm<sup>2</sup>.

However, Pelkie does disclose the optimum compression is about 5 to about 50% of the ambient loft of the carrier material. In certain embodiments, the resiliency of the fibers under compression, (i.e. the fact that the fibers tend to straight back up to their original shape and position they had prior to any compression at the impingement point) will force a portion of their fiber length to embed in the soft molten polymer directly beneath them. Too much compression will force too many fibers to deeply embed or distort and the desired cloth-like characteristics of the end product are lost. In addition, too much compression causes problems such as having the impingement roll bounce, which then causes proved an uneven lamination, i.e. bond strength, of the carrier material onto the film material. Alternatively, if too little compression is used, there

is not enough force to cause sufficient embedding of the carrier materials such that the carrier material is not laminated adequately and will fall or peel of the end product. *See column 9, line 46 to column 10, line 5.*

Pelkie also discloses that the carrier material adheres to the elastomeric film without the use of adhesive (*col. 8, lines 24-26*).

Therefore, since Pelkie discloses that resiliency and bond strength are related to the compression of the article the exact resiliency and bond strength of the laminate is deemed to be a result effective variable with regard to the compression of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as resiliency and bond strength, in the absence of a showing of criticality in the claimed resiliency and bond strength. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). MPEP 2144.05. One of ordinary skill in the art would have been motivated by Pelkie's disclosure to optimize the resiliency and bond strength of Pelkie in order to in sure the article would have sufficient resiliency under compression and a strong enough bond strength not to fall apart during use.

Regarding Applicant's claims 14-16, Pelkie discloses that the absorbent layer is a nonwoven and has a basis weight ranging from about 10 grams per square meter to about 200 grams per square meter, more specifically from about 15 grams per square meter to about 100 grams per square meter and even more specifically from about 20 grams per square meter to about 50 grams per square meter, since the reference teaches the fibrous material can be nonwoven with a basis weight from about 5 to about 150 g/m<sup>2</sup> (*col. 5, lines 17-21 and col. 10, lines 43-48*).

Regarding Applicant's claim 17, Pelkie discloses that the apertured film is made from a polymeric material selected from the group consisting of polyethylene, metallocene catalyzed polyethylene, polypropylene, and copolymers thereof, blends of various molecular weight polymers, and ethylene vinyl acetate copolymers, since the reference teaches that the apertured elastomeric web comprises materials such as polyethylene (*col. 5, lines 22-45*).

Regarding Applicant's claims 20-22, , Pelkie does not explicitly disclose that the article has a an apertured film thickness ranging from about 0.015 mm to about 0.038 mm, more specifically from about 0.018 mm to about 0.030 mm and even more specifically from about 0.020 mm to about 0.025 mm.

However, Pelkie does disclose that in the process of making the laminate the impingement roll is spaced from at a predetermined distance from the screen form a gap there between. The preferred distance of gap between the roll and screen is determined by the thickness of elastomeric film and the carrier being laminated together. The carrier and film are brought into contact at this gap and bonded together. *See column 10, lines 6-32*.

Therefore, the exact thickness apertured film is deemed to be a result effective variable with regard to the gap between the impingement roll and the screen. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as combined thickness of the apertured film through routine experimentation in the absence of a showing of criticality in the claimed thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated to optimize the thickness of the apertured film in order to insure a good contact between the film and the carrier for bonding.



11. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Roe as applied above, and further in view of Daponte (U.S. Patent No. 4,863,779).

Pelkie and Roe are relied upon as described above.

Pelkie and Roe fail to disclose that the article has a drapability from about 25 mm to about 100 mm, more specifically 25 mm to about 75 mm and even more specifically from about 25 mm to about 40 mm.

Daponte discloses a composite elastomeric material, which is suitable as bodyside cover for diapers, health care garments and materials, tissue, and a variety of industrial products (*col. 2, lines 63-66*).

The composite is a soft, cloth-like materials that is superior to prior art materials with respect to drape, strength, and stretch (*col. 1, lines 15-18 and col. 3, lines 42-48*). The composite comprises a first gatherable web, a fibrous elastic web, and a second gatherable web (*figure 2A*). The fibrous web is a nonwoven web with a basis weight ranging from about 15 grams per square meter to about 300 grams per square meter (*col. 14, lines 35-52*).

The article has a drapability from about 25 mm to about 100 mm, more specifically 25 mm to about 75 mm and even more specifically from about 25 mm to about 40 mm, since the reference teaches the composite, i.e. article, has a drape stiffness, i.e. drapability, of 1.87 to 4 centimeters (*column 27, line 68 to column 28, line 1*), which is 18.7 mm to 40 mm.

Drape Stiffness, i.e. drapability, is the measure of the softness of the material, the lower the value the more drape or less stiff and thus the softer material feels to the hand (*column 27, line 60 to column 28, line 3*).

Pelkie, Roe and Daponte are analogous because they all discuss disposable absorbent hygiene products.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have the article of Pelkie and Roe have a drapability of 25 to 40 mm, as taught by Daponte, in order to improve the feel of the article. One of ordinary skill in the art would have been motivated to use a low drapability, such as 25 to 40 mm, because the lower the value the more drape or less stiff and thus the softer material feels to the hand (*Daponte column 27, line 60 to column 28, line 3*). It is desirable to use soft materials in absorbent hygiene products in order to avoid irritating the skin of the user.

12. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Roe as applied above, and further in view of Han (U.S. Patent No. 5,853,638).

Pelkie and Roe are relied upon as described above.

Pelkie and Roe fail to disclose the apertured film made of a blend of various molecular weight polyolefins and the that the apertured film contains from about 1 apertures/cm<sup>2</sup> to about 300 apertures/cm<sup>2</sup> and the diameter of the apertures range from about 0.01 cm to about 0.6 cm.

Pelkie further discloses, it is also contemplated that various blends of resins used to formulate the film can be used to achieve the desired qualities of the end product (*col. 11, lines 8-11*), but does not specifically disclose the apertured film made of a blend of various molecular weight polyolefins.

Han discloses a porous film, which is soft to the touch and processes excellent strength and biaxial stretchability, and also possesses adequate permeability and is used for the manufacture of disposable diapers, water-proof clothing, packing materials, medical supplies,

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and in many other applications as well (*col. 1, lines 5-18*). The film is made from a mixture of three low and medium density polyethylene resins (*col. 2, lines 56-67*).

Pelkie, Roe and Han are analogous because they all discuss disposable absorbent hygiene products, such as diapers.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Han's film blend of various molecular weight polyolefins as the material for the apertured film of Pelkie and Roe in order to improve film strength. One of ordinary skill in the art would have been motivated to use a film made of a blend of various molecular weight polyolefins because it is soft to the touch and processes excellent strength and biaxial stretchability, and also possesses adequate permeability (*Han col. 1, lines 5-18*). It is desirable to have film, which is strong and stretchable so that the film will not break during use.

Regarding Applicant's claim 19, Pelkie discloses the film can be made with different patterns of apertures having different percentages of open areas hole sizes, hole geometries, materials and surface coatings and treatments (*col. 11, lines 6-8*). The apertures are add to the film to impart breathability to the laminate (*col. 2, lines 47-55*).

Therefore, the exact number of apertures per square centimeter and diameter of the apertures are deemed to be result effective variables with regard to the breathability of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as number of apertures per square centimeter and diameter of the apertures, in the absence of a showing of criticality in the claimed ranges. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated to optimize the number of apertures per

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square centimeters and diameter of the apertures depending the desired breathability level desired in the laminate.

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Roe as applied above, and further in view of Daponte and Han.

Pelkie and Roe are relied upon as described above.

The combination of Pelkie and Roe discloses an article with an absorbent layer that is nonwoven having a basis weight ranging from about 20 grams per square meter to about 50 grams per square meter and wherein the article has a compressibility greater than about 25 percent, a resiliency greater than about 94 percent, and a bond strength from about 150 g/cm<sup>2</sup> to about 300 g/cm<sup>2</sup>, see above.

Pelkie and Roe fail to disclose wherein the apertured film is made from a blend of various molecular weight polyolefins and that the article has a drapability of from about 25 mm to about 40 mm.

Pelkie further discloses, it is also contemplated that various blends of resins used to formulate the film can be used to achieve the desired qualities of the end product (*col. 11, lines 8-11*), but does not specifically disclose the apertured film made of a blend of various molecular weight polyolefins.

Han discloses a porous film, which is soft to the touch and possesses excellent strength and biaxial stretchability, and also possesses adequate permeability and is used for the manufacture of disposable diapers, water-proof clothing, packing materials, medical supplies, and in many other applications as well (*col. 1, lines 5-18*). The film is made from a mixture of three low and medium density polyethylene resins (*col. 2, lines 56-67*).

Daponte discloses a composite elastomeric material, which is suitable as bodyside cover for diapers, health care garments and materials, tissue, and a variety of industrial products (*col. 2, lines 63-66*).

The composite is a soft, cloth-like materials that is superior to prior art materials with respect to drape, strength, and stretch (*col. 1, lines 15-18 and col. 3, lines 42-48*). The composite comprises a first gatherable web, a fibrous elastic web, and a second gatherable web (*figure 2A*). The fibrous web is a nonwoven web with a basis weight ranging from about 15 grams per square meter to about 300 grams per square meter (*col. 14, lines 35-52*).

The article has a drapability from about 25 mm to about 100 mm, more specifically 25 mm to about 75 mm and even more specifically from about 25 mm to about 40 mm, since the reference teaches the composite, i.e. article, has a drape stiffness, i.e. drapability, of 1.87 to 4 centimeters (*column 27, line 68 to column 28, line 1*), which is 18.7 mm to 40 mm.

Drape Stiffness, i.e. drapability, is the measure of the softness of the material, the lower the value the more drape or less stiff and thus the softer material feels to the hand (*column 27, line 60 to column 28, line 3*).

Pelkie, Roe, Han and Daponte are analogous because they all discuss disposable absorbent hygiene products, such as diapers.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have the article of Pelkie and Roe have a drapability of 25 to 40 mm, as taught by Daponte, in order to improve the feel of the article. One of ordinary skill in the art would have been motivated to use a low drapability, such as 25 to 40 mm, because the lower the value the more drape or less stiff and thus the softer material feels to the hand (*Daponte column 27, line 60 to*

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*column 28, line 3*). It is desirable to use soft materials in absorbent hygiene products in order to avoid irritating the skin of the user.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Han's film blend of various molecular weight polyolefins as the material for the apertured film of Pelkie and Roe in order to improve film strength. One of ordinary skill in the art would have been motivated to use a film made of a blend of various molecular weight polyolefins because it is soft to the touch and processes excellent strength and biaxial stretchability, and also possesses adequate permeability (*Han col. 1, lines 5-18*). It is desirable to have film, which is strong and stretchable so that the film will not break during use.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

14. Applicant's arguments in the response filed June 4, 2004 regarding the 35 U.S.C. 103 rejections previously of record have been considered but are moot since the rejections have been withdrawn and due to the new grounds of rejection.


#### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac   
Alicia Chevalier ✓

8/23/04